BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL D. PLUMMER	)	
Claimant	)	
VS.	)	
	)	Docket No. 216,677
EBERT CONSTRUCTION, INC.	)	
Respondent	)	
AND	)	
	)	
MARYLAND CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals from the Preliminary Order of Administrative Law Judge Bryce D. Benedict, wherein Administrative Law Judge Benedict granted claimant benefits in the form of temporary total disability compensation and the medical treatment from an injury occurring on June 25, 1996.

ISSUES

1. Whether claimant suffered personal injury by accident arising out of and in the course of his employment with respondent on the date alleged.

2. Whether this claim is compensable, i.e., whether respondent is liable when claimant's injuries were contributed to by claimant's use or consumption of alcohol.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant, a heavy equipment mechanic for respondent, was injured on June 25, 1996, while driving home from work. At the time, claimant was driving a truck belonging to the respondent. Claimant regularly provided on-site repairs of heavy equipment for respondent. This necessitated that certain supplies, replacement parts, and equipment be available to him at the job site. Claimant was provided a truck that he used to carry the supplies and equipment and further used to perform the repairs at the job site. On the date of accident claimant had left the job site and returned to the respondent's place of business. There he re-outfitted the truck with appropriate spare parts and the tools for the next days work. After completing this task he drove the truck fully loaded toward his house. On his way from the company to his house the claimant was involved in an accident causing significant injury to himself and significant damage to the truck.

Respondent contends that claimant should be denied benefits in this matter as his injuries arose at a time when he was coming home from work. K.S.A. 44-508(f) provides in part that the term "arising out of and in the course of employment" "shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties . . . ." The claimant contends on the other hand that his driving of the company truck fully loaded for the next day, provided a special benefit to both the respondent and the claimant and thus should make the injury compensable.

The Appeals Board finds the arguments presented by respondent to more accurately reflect the state of the law as it relates to this factual circumstance. Here claimant had left his employment and was merely traveling home after finishing his days work. He had returned from the job site to the employer's shop and fully loaded the truck in preparation for the next day. He was not required to drive the truck home in the evenings but instead chose to do so rather than using his own personal vehicle. The trip from the shop to the claimant's home provided no additional benefits to respondent. Claimant acknowledged that travel from the shop to his home was not employment time, he was paid no wages and he was provided no travel expenses. The only benefit to claimant was that he was using company gas rather than his own.

The Kansas Court of Appeals in Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984) discussed at length the "going and coming rule" as it applies to Kansas workers compensation cases. Based upon the logic of the Court of Appeals in Messenger, the Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that his accidental injury on June 25, 1996, arose out of and in the course of his employment with respondent.

Having so found, the Appeals Board finds the issue regarding claimant's consumption or alleged consumption of alcohol moot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated November 1, 1996, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

c: Rodney Olsen, Manhattan, KS
Jeff S. Bloskey, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director